Supreme Court, U.S.
FILED
(1)
02 920 DEC 9 2002
OFFICE OF THE CLERK

CASE NO. _____

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2002

LAWRENCE MOORE,

Petitioner,

v.

LOCAL UNION NO. 58, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL 58 ANNUITY FUND; LOCAL 58 PENSION TRUST; LOCAL 58 HEALTH WELFARE TRUST; LOCAL 58 TRAINING TRUST; LABOR-MANAGEMENT CO-OP FUND; LOCAL 58 SUB PAY FUND; LOCAL 58 VACATION PAY FUND; JEFF RADJEWSKI; ELECTRICAL WORKERS JOINT BOARD OF TRUSTEES; THOMAS MITTELBRUN; NATIONAL ELECTRICAL BENEFIT FUND; and NATIONAL ELECTRICAL ANNUITY FUND,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Lawrence Moore, *Pro Se*
Box 13543
La Jolla, CA 92039-3543
Ph. (858) 452-9537

45 pp

QUESTION PRESENTED FOR REVIEW

1. Can a union take monies from paychecks of a non-member for its "dues" and special purpose funds' "required contributions" in the face of the First and Fifth Amendments to the Constitution, and this Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d (1988), and can a court dismiss a suit based on Plaintiff's allegation he was not a "member" of the Defendant Union (within the meaning of Labor-Management Reporting and Disclosure Act §§ 3(o) and 101) by making a ruling of law that he was a "member" - thereby depriving him of the fact-specific opportunity to show that his employment was as a "non-member," and he did not come within the statutory meaning of the term "member" - in the face of this Court's decision in *Southwest Marine v. Gizoni*, 501 U.S. 81, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991)?

LIST OF ALL PARTIES

Petitioner/Appellant/Plaintiff Lawrence Moore, and Respondents/Appellees/Defendants: Local Union 58, International Brotherhood of Electrical Workers; Local 58 Vacation Pay Fund; Local 58 Health Welfare Trust; Local 58 Sub Pay Fund; Local 58 Annuity Fund; Local 58 Pension Trust; Local 58 Health Welfare Trust; Local 58 Training Trust; Labor-Management Coop Fund; Jeff Radjewski; National Electrical Benefit Fund; National Electrical Annuity Fund; Thomas Mittelbrun; and Electrical Workers Joint Board of Trustees.

TABLE OF CONTENTS

page

CITATIONS TO OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

TABLE OF STATUTES 1

STATEMENT OF THE CASE 2

ARGUMENT 5

I. This petition should be granted to review lower court approvals of a union's "takings" from a non-member's wages without notice, due process, or a hearing, and to review the affirmations of such "takings," which have overstepped the boundaries of accepted procedure and departed from the usual course of judicial proceedings, and conflicted with the applicable decisions by this Court (and another circuit court), all of which also require an exercise of this Court's powers of supervision.

CONCLUSION 13

APPENDIX 14

TABLE OF AUTHORITIES

page

Baumgartner v. United States,
322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed.2d 1525 (1944) 11

Brotherhood of Railway, etc. v. Allen,
373 U.S. 113, 83 S.Ct. 1158, 10 L.Ed.2d 235 (1963) 9, 11

Beck v. Communications Workers of America,
468 F.Supp. 93 (1979) 7, 9, 11

Beck v. Communications Workers of America,
776 F.2d 1187 (4th Cir. 1985) 7

Beck v. Communications Workers of America,
800 F.2d 1280 (4th Cir. 1986) 7

Bishop v. Wood,
426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976) 5

Bounds v. Smith,
430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) 12

California Motor Transport Co. v. Trucking Unlimited,
404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972) 12

Chambers v. Baltimore & Ohio Railroad,
207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907) 12

Communication Workers of America v. Beck,
487 U.S. 735, 108 S.Ct. 2641,
101 L.Ed.2d 634 (1988) 3, 6-9, 12

Hospital Bldg. Co. v. Trustees of the Rex Hosp.,
425 U.S. 738, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976) 5

In Re Edmond,
934 F.2d 1304 (4th Cir. 1991) 7

International Association of Machinists v. Street,
367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) 8, 11

Kugler v. Helfant,
421 U.S. 117, 95 S.Ct. 1524, 44 L.Ed.2d 15 (1975) 5

NAACP v. Button,
371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963) 12

Poller v. Columbia Broadcasting Sys.,
368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962) 7

Railway Employees v. Hanson,
351 U.S. 225, 76 S.Ct. 714, 100 L.Ed 1112 (1956) 8

Reed v. United Transp. Union,
488 U.S. 317, 109 S.Ct. 621, 102 L.Ed.2d 665 (1989) 10

Southwest Marine v. Gizoni,
502 U.S. 81, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991) 6

Textile Workers Union v. Lincoln Mills,
353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957) 12

White Motor Co. v. United States,
372 U.S. 253, 83 S.Ct. 696, 9 L.Ed.2d 738 (1963) 6

Wolff v. McDonnell,
418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974) 12

Wooddell v. IBEW Local 71,
502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991) 6

CITATIONS TO OPINIONS BELOW

There were no district or circuit court opinions published below in U.S.D.C. No. 01-72222, or Appeal No. 02-1503.

STATEMENT OF JURISDICTIONAL GROUNDS

Jurisdiction over the case was proper in the district court under 28 U.S.C. §§ 1331, 1337 and 1343. The circuit court's jurisdiction to review orders of the district court was proper under 28 U.S.C. § 1291. This Court has jurisdiction to hear this matter under 29 U.S.C. § 1254(1) and Supreme Court Rule 10.

TABLE OF STATUTES

Page

United States Constitution, Amendment 1 ..... 2, 4, 7, 9-10

United States Constitution, Amendment 5 ..... 2,4, 9-10

Labor Management Relations Act, § 158(a)(3)
(aka NLRA § 8(a)(3)) (29 U.S.C. § 158) 3, 7-8, 10

Labor Management Relations Act, § 160(b)
(aka NLRA § 10(b)) (29 U.S.C. § 160) 10

Labor-Management Reporting and Disclosure Act, § 3(o),
(29 U.S.C. 402) 6

Labor-Management Reporting and Disclosure Act, § 101,
(29 U.S.C. 411) 6, 10

Railway Labor Act § 2, Eleventh,
(45 U.S.C. § 152) 8

Internal Revenue Code §§ 501, 3121, and 3306 7

Federal Insurance Contribution Act ("FICA") 7

Federal Unemployment Tax Act ("FUTA") 7

STATEMENT OF THE CASE

A complaint was filed June 13, 2001, and the First Amended Complaint was filed, and served on all Defendants on October 9, 2001. The first cause of action for violating the First and Fifth Amendments by "taking" money from a "non-member" Plaintiff's paychecks for Local Union No. 58 ("Union") "dues," and special purpose funds ("Funds") "required-contributions" and refusing to return it or give him an option of paying "agency fees" to Union, was against all the defendants, as were the second, third and fifth causes of action, respectively, for fraud and deceit, breach of contract, and intentional infliction of emotional distress.[1]

The fourth cause of action against Union, and CEO Radjewski was for breaches of their fair representation duties ("DFR").

A prayer for declaratory relief asked for: refund of "takings" and affirmation such "takings" were illegal; stopping the takings; stopping the use of a fine-print "dues deduction authorization" on forms non-members must sign to accept the jobs in the hiring hall Radjewski administers; an order collective bargaining agreement ("CBA") parties (Union and employers) must appoint a neutral-third-party to administer that CBA job referral procedure and hiring hall; and an order declaring the fourth cause of action may instead be presented to the jury as a "breach of contract" claim.

A prayer for injunctive relief also asked to enjoin Union and its Funds: from continuing any conduct declared illegal; from all takings of non-members' wages including dues until it establishes "agency fees" procedures; and to require the Union and its Funds to notify non-members of a right "to be reimbursed for the years of ill-gotten 'takings.'" Plaintiff also prayed for special damages, punitive damages and such further relief deemed just and proper.

Union and Radjewski filed their Answer on October 29, 2001, and Plaintiff served interrogatories and requests for production of documents on them on December 3, 2001.

Funds Defendants, including their "administrator" Mittelbrun,

---

[1] Plaintiff also alleged the "takings" included "kickbacks" to employers (in amounts equal to Funds takings) from overtime pay for doing initial deductions from his paychecks and for sending it to Defendants. Exact amounts of wages taken are unknown because Union will not let a non-member see its CBA, and the court would not permit "discovery."

filed and served a "Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative, Summary Judgment" October 29, 2001 supported by Mittelbrun's Affidavit and exhibits. Plaintiff responded on November 26, 2001, and included an Affidavit and separate F.R.Civ.P. 56(f) Affidavit. A Funds' December 4, 2001 reply was supported only by another Mittelbrun Affidavit.

Union and Radjewski then filed a "Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative Summary Judgment as to Counts I-V of Plaintiff's Complaint" November 19, 2001, supported by Radjewski's "declaration." The Plaintiff's December 14, 2001 response included another F.R.Civ.P. 56(f) Affidavit showing outstanding discovery requests, and Union Defendants filed a late, unsupported Reply.

Union then wrote Plaintiff for an extension of time to January 18, 2002 to answer his discovery - which he agreed to - but then also moved for a "protective order" against all discovery (despite filing their Answer, and a Motion for Summary Judgment).

The court then held a telephone status conference and filed its January 7, 2002 Order altering the agreement and allowing Union to avoid discovery. Funds then wrote that judge for dismissal "to expedite...a decision, that might help to minimize the continuing costs to defendants ...." Please see Appendix "Apx" at 20, 21.

Dismissal, and summary judgment was granted to Defendants March 18, 2002 (Apx 22-36) *via* a "Background" and "Analysis" finding: Plaintiff's "position is directly contrary to the purpose of [NLRA § (8)(a)(3)] as explained by the *Beck* Court" (Apx 33); his Constitutional claims "are factually and legally without merit" (Apx 34); and Union Defendants are "private parties" (34-35), to conclude that, "the limitation that § 8(a)(3) places on the use of nonmember dues is simply not implicated here" (Apx 32-35).[2]

The court's attack was for his "insist[ing] ... Local 58 had 'no

[2] That Order is reproduced *without typos*, all the Plaintiff's affidavits showed Defendants' "political" and "organizing" (like *Beck*) spendings, but the Order also mis-stated he tried to "avoid the negotiated overtime arrangements"; his claim "dues" were used for "political or other non-core activities" is "unsubstantiated"; Funds' "takings" from wages are employers' "contributions"; and "union dues" claims are unsustainable.

right' to deduct dues from his wages or other nonmembers of the Local 58" (Apx 33) but insisted he acted "out of retaliation" (35).

That lower court also argued allegations in the First Amended Complaint "that an unknown amount of benefits were taken from him [are] directly contrary to the explanation that Radjewski gave to him," and his 1998 "benefits would have been sent to [a] home fund if he had timely submitted the reciprocity form."[3]

Plaintiff moved to vacate the Judgment (providing an affidavit and evidence of National Electrical Benefit Fund's multi-millions in political-spendings), but was summarily rejected (Apx 37).

On appeal Judgment was affirmed in a *Not Recommended For Full-Text Publication* Order filed September 13, 2002 (mis-stating the case is also filed "pursuant to" ERISA), summed up claims, and rejected judicial bias (below) arguments to conclude,

> "Moore's complaint lacked merit. Moore's first claim, in which he asserts that the defendants violated his constitutional rights, is not actionable. Generally, 'the conduct of private parties lies beyond the Constitution's scope ....'"

Apx 39.

The court acknowledged Plaintiff "was not a member of Local 58," referred to a *public* hiring hall created to administer a CBA job Referral Procedure as "Local 58's hiring hall" and found that his "main complaint is that Local 58 supposedly tricked him into signing the dues deduction authorization," and his other "primary allegations" are the Union denied him "a voice as a non-member" and the CBA didn't permit deductions from non-members' wages for "dues" used for political contributions (ignoring "organizing" and Plaintiff's other objections). The court held a "fourth" claim for breach of the duty of fair representation preempted all "state law claims," and all claims were "time-barred." (Apx 38-40).

---

[3] In 1998 General Motors locked everyone out prior to a strike and the Plaintiff was offered an alternate job by his employer until the lock-out ended but Radjewski refused to let non-members be transferred, instead promising them preference in re-hiring after that lock-out, but reneged, forcing Plaintiff to move on before he completed a "reciprocity" form.

ARGUMENT

I. This petition should be granted to review lower court approvals of a union's "takings" from a non-member's wages without notice, due process, or jurisdiction, and to review the affirmations of such "takings," which have overstepped the boundaries of accepted procedure and departed from the usual course of judicial proceedings, and conflicted with the applicable decisions by this Court, and another circuit court, all of which also require the exercise of this Court's powers of supervision.

The lower court erred by dismissing "non-member" Plaintiff's suit after all Defendants' F.R.Civ.P. 12(b)(6) motions to dismiss, where the court refused to accept any allegations in the complaint as true, and instead argued with every law-related allegation. *See Hospital Bldg. Co. v. Trustees of the Rex Hosp.*, 425 U.S. 738, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976); *Kugler v. Helfant*, 421 U.S. 117, 125 n.5, 95 S.Ct. 1524, 44 L.Ed.2d 15 (1975).

The court erred by granting all Defendants summary judgment where Plaintiff's opposing legal memoranda were supported both by affidavits with exhibits that validated his complaint allegations and F.R.Civ.P. 56(f) affidavits showing Plaintiff diligently served interrogatories and request for production of documents on Union Defendants who answered the complaint, showing the information needed, how it would prevent summary judgment, and why it had not been obtained. Funds did not answer the complaint.

But Plaintiff's papers were carefully scrutinized, rather than Defendants', and disputed matters were resolved in favor of the Defendants, rather than accept the non-movant's version. *But see Bishop v. Wood*, 426 U.S. 341, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976) (non-movant's version of the facts must be accepted).[4]

[4] Plaintiff showed: his 1998 layoff was because he wasn't a "member"; overtime and Funds' takings were from wages; the true "dues deduction authorization" on job referral cards; a first "demand" letter was sent Dec. 12, 2000, and an "agency fees" offer later; and timely, relevant exhibits of Defendant's "political spendings" (but see Apx 17, 22-34).

Although the documents Plaintiff produced, despite the court's effort to preclude discovery, were sufficient to justify opposition, and although responses to the discovery requests would overcome even its "partiality" to Defendants, the Order dismissing the case and granting summary judgment was grounded in refusal to apply the decision of this Court in *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988) to this case, and was a ruling of law equating "membership" in a separate Int'l B'hood of Elect. Wkrs. with "membership" in the Defendant Local Union No. 58. The court's ruling of law was,

> "Plaintiff stands in much different shoes than the Plaintiffs in *Beck*. Unlike the *Beck* plaintiffs, Plaintiff is an IBEW member. [] Plaintiff is not being forced to pay dues by virtue of § 8(a)(3). Plaintiff elected to become a member of the IBEW. Accordingly, the limitation that § 8(a)(3) places on the use of nonmember dues is simply not implicated here."

Apx 32-33. All Union's takings were based on Plaintiff's wages earned as a "Bargaining Unit" worker. Determination of whether he was a "member" of Defendant Local Union No. 58 within the meaning of LMRDA §§ 3(o) and 101 is necessarily fact-specific, and by ruling on a motion for summary judgment that Plaintiff was a "member" as a matter of law, the district court deprived Plaintiff of the opportunity to show that his "employment" did not come within the meaning of that term. *See Southwest Marine v. Gizoni*, 502 U.S. 81, 112 S.Ct. 486, 116 L.Ed.2d 405 (1991) (determination whether plaintiff was a "seaman" was fact-specific, and by ruling he was not a "seaman" as a matter of law deprived him of opportunity to show his employment came within the statutory meaning of that term). *See also Wooddell v. IBEW Local 71*, 502 U.S. 93, 112 S.Ct. 494, 116 L.Ed.2d 419 (1991) (IBEW constitution is a contract between two separate unions).

Access to proof must be seriously considered when granting summary judgment where, as here, the crucial facts are within the control of moving Defendants. *White Motor Co. v. United States*, 372 U.S. 253, 83 S.Ct. 696, 9 L.Ed.2d 738 (1963);

Poller v. Columbia Broadcasting Sys., 368 U.S. 464, 82 S.Ct. 486, 7 L.Ed.2d 458 (1962). *See In Re Edmond*, 934 F.2d 1304 (4th Cir. 1991) (Defendant may not offer affidavit selectively supporting his version of the facts while simultaneously using the Fifth Amendment privilege to forestall discovery).

Plaintiff knows Union Funds' "takings" are amounts deferred from all bargaining unit workers' gross CBA wages only by votes of Union members in closed-to-non-members meetings, but that no such monies may be taken until the Internal Revenue Service approves the Union Funds as "Voluntary Employees' Beneficiary Associations" ("VEBAs"), as per Internal Revenue Code §§ 501, excluding the "deferred" amounts from all workers' gross income (IRS Code §§ 3121 and 3306 exclude similarly deferred monies under the Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA), respectively).

Union may take "agency fees" from nonmember for collective bargaining purposes but other takings implicate First Amendment rights of workers who object. *Beck v. Communications Workers of America*, 468 F.Supp. 93 (1979), *aff'd*, 776 F.2d 1187 (4th Cir. 1985); *aff'd en banc* 800 F.2d 1280 (1986); *Communication Workers of America v. Beck*, 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988), holding it "was not precluded from deciding the merits" of NLRA § 8(a)(3) claims as a "DFR" challenge.

> Respondents ... claim that the union failed to represent their interests fairly and without hostility by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs. The necessity of deciding the scope of § 8(a)(3) arises because *petitioners* seek to defend themselves on the ground that the statute authorizes precisely this type of agreement. Under these circumstances, the Court of Appeals had jurisdiction to decide the § 8(a)(3) question raised by respondents' duty-of-fair-representation claim. (Citations omitted.)

C.W.A. v. Beck, 108 S.Ct. 2647-48.

The Court also decided "takings" from non-members, whether called "assessments," "dues," or for Union special purpose funds (e.g., a credit union or building fund) cannot be "taken" because:

> "obviously, once...determined that the dues were not for collective bargaining purposes [or] 'for the maintenance of the [union] as an organization [the Funds] could be terminated without affecting the continued existence of [the union] as the bargaining representative.'"

Id., 108 S.Ct., at 2652-53, n.7. The Court decided a DFR exists in Constitutional claims litigated instead under § 8(a)(3) because federal courts have "jurisdiction" over union-exactions-of-money-from-nonmembers claims as "governmentally compelled fees." *Id.*, 2655-57, *citing Railway Employees v. Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed 1112 (1956) (R.L.A. preemption of state laws banning union security agreements involves governmental action); *Machinists v. Street*, 367 U.S. 740, 81 S.Ct. 1784, 6 L.Ed.2d 1141 (1961) (R.L.A. § 2, Eleventh limits union exactions from non-members to collective bargaining activities).

The Court held § 8(a)(3), like § 2, Eleventh authorizes only exaction of the fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Communications Workers of America v. Beck*, 108 S.Ct. 2641, 2657 (1988).

The Supreme Court thus reinforced its pragmatic decision to avoid Constitutional decisions where a different option pursuant to statutory constructions was possible,

> Accordingly, in *Street* we interpreted § 2, Eleventh to avoid the serious constitutional questions that would otherwise be raised by a construction permitting unions to expend **governmentally compelled fees** on political causes that nonmembers find objectionable...., and we therefore need not strain to avoid the plain meaning of § 8(a)(3) as we did with § 2, Eleventh. (Citations omitted.) (Emphasis added.)

C.W.A. v. Beck, 487 U.S., at 761. 108 S.Ct., at 2656-57.

Further, the Supreme Court also held,

> "The courts below, of course, possessed jurisdiction over respondents' constitutional challenges. Whether or not the NLRB entertains constitutional claims, such claims would not fall within the Board's primary jurisdiction." (Citations omitted.)

C.W.A v. Beck, 108 S.Ct. 2641, 2648 n.1. Clearly, unions that are "certified" by a federal government administrative agency as the government's "exclusive representative" of all the employees in a "bargaining unit" are "state actors" in that capacity, and this Court affirmed the district court's decision below related to the timeliness of the *Beck* plaintiffs' complaint, which decided,

> Respondents first made known their objections to the petitioner's political expenditures in their complaint filed in this action; however, this was early enough.

Beck v. Communications Workers of America, 468 F.Supp. 93 (D.C.Md. 1979), *citing Brotherhood of Railway, etc. v. Allen*, 373 U.S. 113, 119 n.6, 83 S.Ct. 1158, 1162, 10 L.Ed.2d 235 (1963), and rejecting the union defendants' requests that the *Beck* plaintiffs be required to invoke and exhaust the union's grievance procedure. *Id.*, 468 F.Supp., at 95.

A district court instead embraced Union's fraud that Plaintiff's October 15, 2000 letter (mis-dated September 15, 2000) trying to rescind that fine-print "dues deduction authorization" on Union's job referral acceptance form was instead a "demand" letter that made his initial June 13, 2001 filing time-barred (Apx 36).

The circuit court held he "should have known of the union's alleged breach of the duty of fair representation ... well before he completed the second job during the week ending November 4, 2000" (ignoring this Court's *Beck* choices) and applied the same time-barred "six-months statute of limitations" (Apx 39-40).

However, the first of Plaintiff's letters that could be construed as a "demand" letter was mailed December 12, 2002 (Apx 17).

Those lower courts also erred by ruling the instant breach of duty of fair representation claim is barred by the LMRA § 160(b) 6-month limitation period, where Constitutional claims are being litigated instead under LMRA § 158(a)(3) (NLRA 8(a)(3)).

Because the underlying Constitutional claims may be resolved *via* that "judicially implied" duty of fair representation, and none of the criteria usually present to accommodate federal interests in stable bargaining relationships between employers and unions, or in private dispute resolution under CBAs (which normally call for the 6-months statute of limitations) there can be no good reason for imposing it here.

The Supreme Court has declined to impose that N.L.R.A. § 10(b) 6-months limitation period on analogous grounds, stating,

> Because [LMRDA] § 101(a)(2) is modeled on the First Amendment, it is readily analogized to state personal injury actions.... It was held that suits under 42 U.S.C. § 1983, which also protects the exercise of First Amendment rights, are governed by state general or residual personal injury statutes of limitations. (Cite omitted.)

Reed v. United Transp. Union, 488 U.S. 317, 319-320, 109 S.Ct. 621, 623, 102 L.Ed.2d 665 (1989), further stating,

> The 6-month § 10(b) statute of limitations was crafted to accommodate federal interests in stable bargaining relationships between employers and unions and in private dispute resolution under collective-bargaining agreements. Insofar as those interests are implicated ..., however, the relationship will be tangential or remote - as in the present case, which involves an internal union dispute that can have only an indirect impact on economic relations between union and employer and on labor peace.

Reed v. United Transp. Union, 109 S.Ct. 621, 623 (1989).

The district court depended on the historical fact of when

Plaintiff first "attempted to rescind his dues authorization," and the circuit court used when "he first knew or should have known." Those two courts' arguments over historical facts, whittled down to a meaning understood in light of prevailing law, is that Plaintiff did not object to Union's "takings" for those purposes set out in *International Association of Machinists v. Street*, 367 U.S. 740, 774, 81 S.Ct. 1784, 1803, 6 L.Ed.2d 1141 (1961) early enough. Disputes over whether a thing was done (or an event occurred) may be called *historical* facts, and are issues for the jury. *See Baumgartner v. United States*, 322 U.S. 665, 671, 64 S.Ct. 1240, 1243, 88 L.Ed.2d 1525 (1944).

None of those issues are present here, where this Plaintiff's Complaint set out, for the first time, his "objections" that Union was using monies wrongfully taken from his wages for "political" and other prohibited purposes. *See Beck v. C.W.A.*, 468 F.Supp. 93, at 95 (D.C. Maryland 1979). As that court held,

> Thus, it is clear that the law does not require an affirmative demonstration of protest as a condition precedent to bringing suit. All that is required is that the individual dissenter make known his position so that, in fairness to the union, no one who does *not* object to the union's political expenditures is able to secure relief.

Id., at 95, *citing International Association of Machinists v. Street, supra*, and *Brotherhood of Railway, etc. v. Allen*, 373 U.S. 113, 119 n.6, 83 S.Ct. 1158, 1162, 10 L.Ed.2d 235 (1963), holding,

> Respondents first made known their objection to the petitioner's political expenditures in their complaint filed in this action; however, this was early enough.

Beck v. C.W.A., at 95.

Plaintiff's affidavits in support of oppositions to Defendants' motions to dismiss, and for summary judgment also showed their willingness to use physical force to enforce such takings, and that assaults and batteries by "goon squads" in Detroit, and its "sister

union" in Toledo, Ohio forced Plaintiff to relocate his family in the 1980s (he has similarly sued that Ohio union for its "takings" and for stealing money "reciprocated" to it from the instant union and others after a trusted administrator of Toledo funds retired).[5] The right of access to the federal courts is basic to our system of government, and it is well established that it is a fundamental right protected by the Constitution. As this Court has decided,

> The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.

Chambers v. Baltimore & Ohio Railroad, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963); *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974); *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977) (prisoners have more right of access to courts than collective bargaining workers).

There is no doubt that union's "takings" from the Plaintiff's

---

[5] The district court's Order dismissing Plaintiff's suit to recover his property was inherently tribalistic, rather than rational, and was clearly meant to further political and economic agendas. It is very difficult to understand why working peoples' Constitutional rights to their property are compromised in pursuit of a separate body-of-labor-law, for unions and employers willing to bargain "collectively" with unions, pursuant to *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957). *Beck* dissenters probably wouldn't feel the same if a foreign Bar Association stole one third of their salaries for a *pro hac vice* appearance.

wages constitute "outright seizure" of his property without notice, a hearing or due process because he isn't a member of the Union with a right to debate and vote on motions to defer part of wages members earn as "bargaining unit" workers into Union Funds, or to vote on Bylaws dues also approved only in Union's meetings.

CONCLUSION

Of course, the problems could be resolved by offering all non-members "membership" equally, as per the CBA's union security clause, or by such unions settling for the "agency fees" they are now entitled to by law, rather than abusing their administrations of CBA job referral procedures to extort and intimidate such non-members out of their wages, but Socrates drank hemlock, Galileo recanted, Hobbes' theories have not been successfully refuted, and Darwin has been wrongly blamed for fascism, indicating that it may be perspicacious, at least contemporaneously, to rely on a social contract created by the framers of the Constitution rather than the ethical priorities of union officers, politicians, or judges.

The district court erred by not accepting the allegations of the First Amended Complaint as true, and instead dismissing that suit under Fed.R. Civ.P. 12(b)(6), and erred by holding as a matter of law that Plaintiff was a "member" of Defendant Union, where such a determination is necessarily fact-specific, especially since the Union's right to deduct both dues, and monies for its "special purpose funds" from bargaining unit workers' paychecks depends on the statutory meaning of that term. Plaintiff owed Union only "agency fees" that may not be "taken" without his permission.

Plaintiff diligently served discovery requests on Union and its CEO Radjewski (the self-appointed Funds trustee and manager of the employers job referral procedure) but they were excused from answering by that January 7, 2002 district court status conference Order, indicating "summary judgment" was premature. Plaintiff did not sue Radjewski for depriving him of his job in 1998, and tried to effect a compromise on Union's takings, but overweening Radjewski insisted on taking it all because other unions affiliated with the IBEW do so, and insisted that Plaintiff had no choice.

Dated: 12-06-2002 Lawrence Moore

Lawrence Moore

APPENDIX

page

Labor Management Relations Act, § 158(a)(3)
(29 U.S.C. § 158) 15

Labor-Management Reporting and Disclosure Act,
§ 2 (29 U.S.C. 401) 16

Labor-Management Reporting and Disclosure Act,
§ 3(o) (29 U.S.C. 402) 16

Labor-Management Reporting and Disclosure Act,
§ 101(a)(1) (29 U.S.C. 411) 16

Plaintiff's "demand" letter dated DEC 12, 2000 17

Order Setting Date for Status Conference, etc.
filed NOV 29, 2001 18

Plaintiff's letter extending discovery deadline two weeks,
dated JAN 2, 2002 19

Order extending discovery deadline until case is dismissed,
filed JAN 7, 2002 20

Defendants' Letter asking judge to dismiss case,
dated FEB 19, 2002 21

Order dismissing case,
filed MAR 18, 2002 22

Judgment filed MAR 18, 2002 37

Order denying request to allow reconsideration motion,
filed APR 11, 2002 37

Order Denying Appeal,
filed SEP 13, 2002 38

Labor Management Relations Act

Unfair Labor Practices

Sec. 158(a)(3). (29 U.S.C. § 158) It shall be an unfair labor practice for an employer - by discrimination in regard to hire or tenure or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreeement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

Labor-Management Reporting and Disclosure Act

Declarations of Findings, Purposes, and Policy:

Sec. 2(b). (29 U.S.C. 401) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplemental legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this Act is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended, and the Railway Labor Act, as amended, and have the tendency or necessary effect of burdening or obstructing commerce ....

Definitions: Sec. 3(o). (29 U.S.C. 402)

For the purposes of titles I, II, III, IV, V (except § 505), and VI of this Act - "Member" or "member in good standing" when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership ....

Title I - Bill of Rights of Members (29 U.S.C. 411):

Sec. 101(a)(1). Every member of a labor organization shall have equal rights and privileges within such organization to nominate cnadidates, to vote in elections ..., to attend membership meetings and to participate in the deliberations and voting ... subject to reasonable rules and regulations ....

December 12, 2000
Jeff Radjewski, Business Manager IBEW Local 58
1358 Abbott Street
Detroit, MI 48226-2460

Dear Sir:

I wrote to you on October 15, 2000 rescinding a "Payroll Deduction Authorization" you had me sign when I accepted a job with Triangle Electric Inc. on 9-15-00 (I also asked you to inform that employer) and requested names of all Sub-pay Fund trustees and administrators and all documents describing the legal makeup and operation of that entity, including all of the bases for participation, qualification and for receiving benefits. I also referred to my October 5, 2000 letter to an administrator of all Local 58's "Trusts," "Funds," and "Committees" funded by deductions from gross wages I earned when I worked under your collective bargaining agreement (enclosing a copy of that letter to your administrator). You did not reply.

Triangle Electric continued to deduct 3% of my gross wages. Please refund all "Union Working Dues" deducted from paychecks by Triangle Electric, and by Hall Engineering. I am not a member of Local 58.

Please consider this to be a request for your direct re-payment to me of any and all monies deducted from my wages to fund any of the joint trusts and/or committees identified in collective bargaining agreement(s), Bylaws, and constitutions, which Local 58 is a party to (including that Sub-pay fund), and also want all my monies which you have sent to Washington, D.C. based International Brotherhood of Electrical Workers refunded, including specifically, deductions for a Labor-Management Coop Committee(s) (including all the monies deducted from my wages when I worked for Hall Engineering in 1998).

Thank you for your cooperation.

Sincerely,
Lawrence Moore

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CASE NO. 01-72222

Order Setting Date For Status Conference And Response To Motion For Dismissal For Failure To State A Claim On Which Relief Can Be Granted, Or In The Alternative Summary Judgment On Counts I-V Of Plaintiff's Complaint, Filed November 19, 2001

IT IS ORDERED that plaintiff file a response to Defendants' IBEW Local 58 and Jeffrey Radjewski's Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative Summary Judgment as to Counts I-V of Plaintiff's Complaint, filed November 19, 2001, by Friday, December 14, 2001.

IT IS FURTHER ORDERED that a Status Conference will be held by telephone on Friday, Janaury 4, 2002 at 11:00 a.m. The Court will initiate the conference call.

IT IS SO ORDERED.

Filed: NOV 29, 2001

Victoria A. Roberts
U.S. District Judge

January 2, 2002
To: Duane F. Ice
Martens, Ice, Glass, etc.
17117 West Nine Mile Road, # 1400
Southfield, MI 48075
Ph. (248) 559-2110

Re: Moore v. IBEW Local 58, U.S.D.C. Case No. 01-72222.

Dear Sir:

Your letter dated December 28, 2001 requesting agreement to extend the time period for responses to my First Set(s) Of Interrogatories and First Request(s) For Production of Documents to Defendants Jeff Radjewski and Local Union 58 until January 18, 2002 on grounds this case may be dismissed on January 4, 2002 has been received. All of the responses to discovery requests are due on January 5, 2002. It seems that you decided to dedicate Local 58's resources to requests for "protective" orders (complete with *ad hominem* attacks you first began in your motions to dismiss) rather than answers and responses to the discovery requests. I note for the record that your letter, and your motion for protective order emanated from your offices on the same date.

In the future I will not agree to any such extensions of time based on personal attacks, however, other than the caveat of any contrary ruling by the presiding judge on January 4, 2002 I will tentatively agree to your current request for extension of time to January 18, 2002. Please send a proposed stipulation in the future.

The agreement to extend time was telephoned to Ms. Debra Krell of your office this morning, after I was informed that you were "with a client," and John Adams was not available.

Thank you for your cooperation.

Sincerely,
Lawrence Moore

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CASE NO. 01-72222

Order

Defendants The International Brotherhood of Electrical Workers, Local 58 ("Local 58") and Jeffrey Radjewski filed a Motion For Protective Order (Doc #24). Based on a telephone conference held on January 4, 2002 and attended by Lawrence Moore representing himself, Patricia Fabrizio representing the IBEW Local 58 Funds and Thomas Mittelbrun, and John Adams representing Local 58 and Jeffrey Radjewski, this motion is deemed WITHDRAWN. Mr. Moore agrees that discovery should be held in abeyance pending the outcome of dispositive motions which are pending.

IT IS SO ORDERED.

Filed: JAN 7, 2002

Victoria A. Roberts
U.S. District Judge

February 19, 2002
Sachs Waldman
1000 Farmer Street
Detroit, MI 48226-2899
Ph. (313) 965-3464

Hon. Victoria Roberts
United States District Court
231 W. Lafayette Boulevard
Detroit, MI 48226

Re: Lawrence Moore v. IBEW Local 58, Case No. 01-72222

Your Honor:

On behalf of these Defendants, we filed a Motion For Dismissal For Failure to State a Claim on Which Relief Can Be Granted, or in the Alteranative, Summary Judgment on October 29, 2001. The hearing was held January 4, 2002 on this Motion and on the Motion of the other defendants for summary judgment. Your Honor indicated at that hearing (held telephonically) that a decision would be promptly rendered.

Since that time, plaintiff has filed a motion to transfer this and two unrelated matters to the Multidistrict Litigation Panel, to which defendants have responded at considerable cost. That motion has now been scheduled for hearing in Tucson, Arizona on March 21, 2002, which will involve additional considerable costs.

I write to inquire as to the status of the Motions pending before the Court and to respectfully request that your Honor, if possible, expedite the rendering of a decision, which might help to minimize the continuing costs to defendants in defending what is undoubtably a meritless and frivolous action.

Sincerely,
Patricia J. Fabrizio

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CASE NO. 01-72222

Order Granting Dismissal and Summary Judgment In Favor of Defendants.

I. Introduction

On June 13, 2001 Plaintiff filed his lawsuit against the International Brotherhood of Electrical Workers Local 58 ("Local 58"), Jeff Radjewski, Thomas Mittelbrun, and several fringe benefit funds ("the Funds").[1] The Funds and Mittelbrun filed a Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative, Summary Judgment on October 29, 2001, and the Local 58 and Radjewski filed a Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative Summary Judgment as to Counts I-V of Plaintiff's Complaint on November 19, 2001. For the reasons that follow, the Court will grant the Motions.

II. Background

During the relevant time period, Plaintiff was a member of the International Brotherhood of Electrical Workers ("IBEW")

---

[1] According to Defendants the proper legal names for the Funds are IBEW Local 58 Annuity Fund, Electrical Workers' Pension Trust Fund of Local Union # 58, I.B.E.W., Detroit, Michigan; Electrical Workers Insurance Fund; Apprentice and Journeyman Training Trust of the Electrical Industry, Detroit, Michigan; Southeastern Michigan Electrical Industry Labor Management Cooperation Trust Fund; Supplemental Unemployment Benefit Plan of the Electrical Industry, Detroit, Michigan; Electrical Workers Joint Board of Trustees Vacation Fund.

The Funds further state that there is no legal entity known as the Electrical Workers' Joint Board of Trustees. Rather, that term is used to collectively describe the fringe benefit funds established by Local 58's collective bargaining agreement, the International Brotherhood of Electrical Workers, and the Southeastern Michigan Chapter of the National Electrical Contractors Association.

Local No. 8 in Rossford, Ohio (*Local 58 Br.* at Ex A). Perhaps because of that membership, he was able to obtain "job referrals from an electrical contractors' Hiring Hall created by the collective bargaining agreement ('CBA') between Defendant LOCAL 58 and Detroit area electrical contractors" (*Complaint* at ¶ 3). Like Local 8, "LOCAL 58 ... is affiliated with Intern'l B'hood of Elect. Wkrs ...." (*Complaint* at ¶ 4).

Perhaps because of Local 58's affiliation with IBEW, Plaintiff was allowed to sign a Pension Reciprocity form that would allow contributions made to the benefit funds on Plaintiff's behalf to be sent to his Local 8 funds. (See *Local 58 Br.* at Ex A). But, when Plaintiff worked under Local 58's jurisdiction in July 1998, he did not complete the reciprocity form. He did not realize this error until 2000. On July 14, 2000 Plaintiff wrote a letter to the business manager of Local 58 explaining that he had previously "forgotten to come back and fill out reciprocity forms," and asking that the contributions now be sent to the Local 8 funds. (*Id.*) That request was denied by the Board of Trustees of the Electrical Workers' Pension Trust Fund. Thomas Mittelbrun III, the administrator of the fund, explained in a September 13, 2000 letter to Plaintiff that his "request was denied due to it being made outside the time limit of one year allowed by the Plan." (*Local 58* Br. at B).

Two days later, on September 15, 2002 Plaintiff received a referral from Local 58 to performance work for Triangle Electric Company. At the bottom of the relevant referral card there is a section that states in bold and relatively large type, "PAYROLL DEDUCTION AUTHORIZATION." Underneath the card states:

> I authorize the above Employer to deduct from my paycheck, the Union Working Dues, as stated and required in the amount fixed in the Bylaws of the Local Union 58, IBEW, and remit same to said Local Union in accordance with the terms set forth in the Bargaining Agreement between the NECA Chapter Southeastern Michigan and Local Union 58, IBEW.

(*Local 58 Br.* at Ex. C). Plaintiff signed the referral card on the

line directly below that paragraph. (*Id.*)

It appears likely that Plaintiff signed the referral card before he received the September 13 denial letter from Middleton because, in a letter dated September 16, 2000 he angrily attempted to rescind the payroll deduction authorization. (*Local 58 Br.* at Ex. D). That September 15 letter was sent to Jeff Radjewski, the Local 58's business manager. Plaintiff began the letter by accusing Radjewski of "illegally screwing" him out of his job in July 1998 when he was laid off. (*Id.*) He continued the letter by stating that, in response to his request to have his 1998 pension fund "deductions"[2] sent to his home funds, Radjewski "blew [him] off with an abusive, intrusive letter from your Pension Trust administrator who attached a pretentious suffix to this name ...." (Id.) Plaintiff stated to Radjewski:

> I have no idea why you are so chicken-hit in stealing my 80 Pension credit-hour deductions ..., but whatever caused it is also causing my following reactions.
>
> I am hereby rescinding that "dues check-off authorization" I signed when I accepted a job-offer from Triangle Electric Co. on 9/15/00. Please inform my employer immediately and please also send me names of all "Sub-pay" Fund trustees and administrators and all documents describing the legal make-up and operation of that entity ....

(*Id.*)

What is important to note from the above letter is that Plaintiff did not indicate to Radjewski that he mistakenly or unknowingly signed the dues deduction authorization. He does not state that he was tricked. Rather, he stated that he wanted to rescind that authorization in response to the decision to deny his

---

[2] As will be explained *infra.*, Radjewski maintained that there were no pension *deductions* from Plaintiff's paycheck. Rather, the employer had made pension *contributions* over and above Plaintiff's pay.

request to have his 1998 pension benefits transferred to his home fund.

A more friendly letter dated September 15, 2000 was sent from Plaintiff to Frank Demers of Local 58. (*Local 58 Br.* at Ex. E). He explained that his recent review of his records revealed that he had forgotten to fill out and return a reciprocity form for the 80 hours he worked under Local 58's jurisdiction in 1998. Plaintiff asked Demers for help. (*Id.*)

On December 12, 2000 Plaintiff wrote another letter to Radjewski complaining that Radjewski had never responded to his earlier letter and that the dues were still being deducted from his wages. Plaintiff asked Radjewski to refund all the dues that had been deducted. (*Local 58 Br.* at Ex. F).

Radjewski responded on January 2, 2001, acknowledging that he had not responded to Plaintiff's earlier letter. He reasoned, "If you want a civil reply write a civil letter." (*Local 58 Br.* at G). Radjewski further stated that Plaintiff would need to notify his employer if he wanted to cancel his payroll deduction authorization. He informed Plaintiff that Local 58 could not start or terminate a payroll deduction on its own. Moreover, Radjewski stated, since Plaintiff was a member of the IBEW he was not entitled to a refund of all dues and benefit fund contributions. "On the contrary, you are required to meet all member obligations, includes those obligations imposed by Local 58's collective bargaining agreement with its employers under which you worked and got paid." (*Id.*) In the interest of the entire IBEW membership, it was Radjewski's duty to uphold the obligations imposed by the Local 58 collective bargaining agreement "under which you worked and got paid." (*Id.*) Radjewski additionally explained, "Benefit contributions are not deductions from your wages. They are separate obligations, in addition to wages, that the employers must meet pursuant to the collective bargaining agreement." (*Id.*)

In response to Radjewski's January 2 letter Plaintiff for the first time accused the managers of the hiring hall of tricking him into signing the payroll deduction authorization. (*Local 58 Br.* at H). In his January 19, 2001 letter Plaintiff stated that his membership with the IBEW was unrelated to the Local 58's request to take money from his wages and that he had no

obligation to pay the dues, and accused Local 58 of having engaged in theft. (*Id.*) Plaintiff demanded that all deductions from his 1998 and 2000 wages be returned to him. (*Id.*)

Radjewski wrote back to Plaintiff on March 5, 2001 and denied that Plaintiff had been tricked. (*Local 58 Br.* at I). The referral card had the authorization on it in plain sight and Plaintiff signed it. Further, "[p]aying working dues is a member's obligation and, as I understand it, you are still an IBEW member with Card No. D295652." And, the benefit contributions that were paid by the employer were owed pursuant to the collective bargaining agreement - the same collective bargaining agreement that entitled Plaintiff to wages from his employer. (*Id.*) Moreover, Radjewski explained:

> Our arrangement on these issues are the same as other locals around the country. You and all IBEW members receive the advantages of these arrangements. As I told you previously, I am required to uphold the IBEW constitution and our collective bargaining agreement. These monies are not "stolen by minority votes at union meetings" as you claim.
>
> Even if there were to be a refund of benefit contributions, any such refund would go back to the employer who paid them, not you. The reason is that benefit contributions are not deductions or "theft," as you call it, from your gross wages. The wages are entirely separate from the benefit contributions paid by employers.

(*Id.*)

Plaintiff's April 5, 2001 letter revealed that he was undeterred. He continued to seek the 80 credit-hours of pension contributions that he insisted were stolen from his paycheck. And, he continued to insist that he owed no dues to the Local 58 because he was not a member of that organization. The deduction of dues was according to Plaintiff taxation without representation because he had no voice or vote in Local 58. (*Local 58 Br.* at Ex. K).

This lawsuit followed. As described below the Court finds that Plaintiff's allegations either fail to state a claim or are not supportable by the evidence.

III. ANALYSIS

A. Standards of Review

Defendants' Motion is partially filed pursuant to Fed.R.Civ.P 12(b)(6). When reviewing a Rule 12)b)(6) Motion the trial court "must construe the complaint liberally in the plaintiff's favor and accept as true all factual allegations and permissible inferences therein." *Gazette v. City of Pontiac*, 41 F.3d 1061, 1064 (6th Cir. 1994); *see also Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995). Because a Rule 12(b)(6) motion rests upon the pleadings rather than the evidence, "[i]t is not the function of the court [in ruling on such a motion] to weigh evidence or evaluate the credibility of the witnesses." *Miller*, 50 F.3d at 377. The court should deny a Rule 12(b)(6) motion "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Gazette*, 41 F.3d at 1064; *see also Miller*, 50 F.3d at 377; *Vemco, Inc. v. Camardela*, 23 F.3d 129, 132 (6th Cir. 1994). While this standard is decidedly liberal, it requires more than the bare assertion of legal conclusions. *In re DeLorean Motor Co.*, 991 F.2d 1236, 1249 (6th Cir. 1993). Rather, the complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory. *DeLorean*, 991 F.2d at 1240.

Defendants also rely upon Fed.R.Civ.P. 56(c). Under Rule 56(c) summary judgment may be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Copeland v. Machulis*, 57 F.3d 476, 478 (6th Cir. 1995). A fact is "material" and precludes a grant of summary judgment if "proof of that fact would have [the] effect of establishing or refuting one of the essential elements of the cause of action or defense asserted by the parties, and would necessarily affect application of appropriate principle[s] of law to the rights and obligations of the parties."

Kendall v. Hoover Co., 751 F.2d 171, 174 (6th Cir. 1984). The court must view the evidence in the light most favorable to the nonmoving party and it must also draw all reasonable inferences in the nonmoving party's favor. *Cox v. Kentucky Dept. of Transp.*, 53 F.3d 146, 150 (6th Cir. 1995).

The moving party bears the initial burden of showing that there is no genuine issue of material fact. *Snyder v. AG Trucking Co.*, 57 F.3d 484, 488 (6th Cir. 1995). To meet this burden the movant may rely on any of the evidentiary sources listed in Rule 56(c). *Cox*, 53 F.3d at 149. Alternatively, the movant may meet this burden by pointing out to the court that the nonmoving party, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case, and on which that party will bear the burden of proof at trial. *Tolton v. American Biodyne, Inc.*, 48 F.3d 937 (6th Cir. 1995); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989). Thus, a motion for summary judgment is a means by which to challenge the opposing party to "put up or shut up." *Cox*, 53 F.3d at 149; *Street*, 886 F.2d at 1478. The moving party does not, however, have to support its motion for summary judgment with evidence negating its opponents claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985).

Once the moving party has met its burden, the burden shifts to the nonmoving party to produce evidence of a genuine issue of material fact. Rule 56(e); *Cox*, 53 F.3d at 150. The nonmoving party cannot rest on its pleadings, but must present significant evidence in support of its complaint. *Copeland*, 57 F.3d at 479. The mere existence of a scintilla of evidence to support the nonmoving party position will be insufficient; there must be evidence on which a jury could reasonably find for the non-moving party. *Snyder*, 57 F.3d at 488; *Tolton*, 48 F.3d at 941.

B. Count I

Plaintiff's first count alleges, against all Defendants, a violation of his First Amendment Rights of Free Speech and Association and a Fifth Amendment taking without due process. This Count includes a litany of allegations, including that the Local 58 refuses to allow non-members any voice or vote on the

collective bargaining agreement; has no right to deduct dues from non-members under the CBA; and requires electricians who accept jobs at the hiring hall to sign a job acceptance form which includes a payroll deduction authorization in fine print. Plaintiff contends that he was not told that the payroll deduction authorization was on the job acceptance form, but that Local 58 nonetheless took three percent of his wages; that Plaintiff was given no vote on participating in the Funds, but that Defendants took monies from Plaintiff for nonexistent, unavailable benefits; that Defendants also took monies from Plaintiff by agreeing that he receive reduced rates of pay for overtime work; and that the Local 58 refused to honor Plaintiff's rescission of his dues deduction authorization. Further, Plaintiff alleged:

> 37. At least some of the monies deducted from the PLAINTIFF's wages by Defendants TRUST and FUNDS are expended for political or for lobbying activities not directly related to work conditions, or community services, union organizing, foreign affairs, publicity or public affairs, given to Political Action Committees, or to support political candidates, parties, causes, and TRUST Defendant NATIONAL ELECTRICAL BENEFIT FUND illegally funnelled millions of dollars to political parties and politicians, causing one Trustee to resign.
>
> 38. Defendant UNION similarly expended funds for political or for lobbying activities not directly related to work conditions and gave to community services, union organizing or foreign affairs and publicity or public affairs, and to Political Action Committees and to support political candidates, parties, and causes.

(*First Amended Complaint* at 4-6).

Apparently Plaintiff included the allegations set forth in paragraphs 37 and 38 in order to have his Complaint fall within *Communications Workers of America v. Beck*, 487 U.S. 735

(1988). Plaintiff cited that case in correspondence to Radjewski and deems that the most relevant authority for this Court to review. Having reviewed *Beck*, the Court finds that *Beck* does not support Plaintiff's claim. To the contrary, it highlights congressional efforts to discourage what Plaintiff is attempting to accomplish here, which is to reap the benefits that Local 58 has negotiated with employers but to escape contributing financially.

In *Beck* the Court framed the issue before it as follows:

> Section 8(a)(3) of the National Labor Relations Act of 1935 (NLRA), 49 Stat. 452, as amended, 29 U.S.C. § 158(a)(3), permits an employer and an exclusive bargaining representative to enter into an agreement requiring all employees in the bargaining unit to pay periodic union dues and initiation fees as a condition of continued employment, whether or not the employees otherwise wish to become union members. Today we must decide whether this provision also permits a union, over the objections of dues-paying nonmember employees, to expend funds so collected on activities unrelated to collective bargaining, contract administration, or grievance adjustment, and, if so, whether such expenditures violate the union's duty of fair representation or the objecting employees' First Amendment rights.

Id. at 738.

The plaintiffs in *Beck* were employees of AT&T who chose not to become union members. They challenged the union's collection of "agency fees" from them to the extent that the fees were used for purposes other than collective bargaining, contract administration, or grievance adjustment, which the *Beck* Court denoted "'collective- bargaining' or 'representational" activities.'" *Id.* at 739-740. The plaintiffs specifically challenged their fees being used for the "organizing the employees of other employers, lobbying for labor legislation, and participating in social, charitable, and political events ...." *Id.* at 740. They claimed that the use of their fees for such purposes

violated their rights under § 8(a)(3 of the NLRA and the First Amendment. *Id.*

To determine whether the use of the plaintiffs' fees for the challenged activities violated § 8(a)(3) the Court reviewed the structure and purpose of § 8(a)(3). Its examination revealed that the drafters of that section had two aims in mind. One aim was to eliminate the barrier created by closed union shop agreements, i.e., agreements that required an employer to hire only persons who were already union members. *Id.* at 748. An equally significant goal was to prevent nonunion members from getting a free ride. *Id.*

> As Senator Taft, one of the authors of the 1947 legislation, explained, 'the argument ... against abolishing the closed shop ... is that if there is not a closed shop those not in the union will get a free ride, that the union does the work, gets the wages raised, then the man who does not pay dues rides along freely without any expenses to himself.' 93 Cong.Rec. 4887 (1947), Leg.Hist. 1422. Thus the Taft-Hartley Act was 'intended to accomplish twin purposes.-On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, congress recognized that in the absence of a union-security provision "many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost. *NLRB v. General Motors Corp.*, 373 U.S., at 740-741, 83 S.Ct., at 1458 (quoting S.Rep., at 6, Leg.Hist.412).

Id. at 748-749.

Thus, in enacting § (8)(a)(3), "'Congress recognized the validity of unions' concerns about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their *fair share* of financial support to such union, and gave unions the power to contract to meet *that problem* while withholding from unions the power to cause the discharge of

employees for any other reason.'" *Id.* at 749, (quoting *Radio Officers v. NLRB*, 347 U.S. 17, 41 (1954))(emphasis added in *Beck*).

The *Beck* Court concluded:

> Taken as a whole, § 8(a)(3) permits an employer and a union to enter into an agreement requiring all employees to become union members as a condition of continued employment, but the 'membership' that may be so required has been 'whittled down to its financial core.' *NLRB v. General Motors Corp.*, 373 U.S. 734, 742, 83 S.Ct. 1453, 1459, 10 L.Ed.2d 670 (1963). The statutory question presented in this case, then, is whether this 'financial core' includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment. We think it does not.

Id. at 745.

In this case Plaintiff stands in much different shoes than the plaintiffs in *Beck*. Unlike the *Beck* plaintiffs, Plaintiff *is* an IBEW member. Plaintiff highlights the fact that he is not specifically a member of Local 58, but he also admits that Local 58 "is affiliated with Intern'l B'hood of Elect. Wkrs." (*Amended Complaint* at ¶ 4). Indeed, Plaintiff emphasizes that he has a contractual relationship with Local 58, and sites the IBEW Constitution at Article XX in support,

> Sec. 3 The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

Thus, unlike the *Beck* plaintiffs, Plaintiff is not being forced to pay dues by virtue of § 8(a)(3). Plaintiff elected to become a

member of the IBEW. Accordingly, the limitation that § 8(a)(3) places on use of nonmember dues is simply not implicated here.

Of equal significance, the *Beck* plaintiffs did not attempt to reap the benefits of the CBA but, at the same time, avoid making any financial contributions to the union. They objected only to the use of their dues for expenditures outside of the union's collective bargaining and representational activities. In contrast Plaintiff here acknowledges that he "worked as an electrician via job referrals from an electrical contractors' Hiring Hall created by the collective bargaining agreement ("CBA") between Defendant Local 58 and Detroit area electrical contractors," and that he was "a 'third party beneficiary' to a CBA between UNION and employers which contains a job Referral Procedure and an 'out-of-work list." (*Amended Complaint* at ¶¶ 3 & 15). Despite reaping those benefits Plaintiff insists that the Local 58 had "no right" to deduct dues from his wages or other non-members of the Local 58. (Amended Complaint at ¶ 19).

Plaintiff's position is directly contrary to the purpose of § 8(a)(3) as explained by the *Beck* Court. One of the twin aims of § 8(a)(3) was to prevent those who choose not to join a union from getting a free ride. Employees who enjoy the benefits of the collective bargaining agreement and other core activities of the union must pay their fair share. Since § 8(a)(3) requires even nonunion members to contribute to the costs of the CBA Plaintiff's protestation that he does not have to pay dues because he does not have a voice or vote in the CBA is unavailing. And his desire to gain employment and earn wages as a beneficiary of the CBA, but to avoid the negotiated overtime arrangements cannot withstand scrutiny.

Plaintiff argues that his dues are used for political and other non-core union activities. That claim is unsubstantiated. Plaintiff's only evidence is a November 1992 *I.B.E.W. Local 58 Newsletter*, in which Local 58 opined that then presidential candidate Bill Clinton's track record was on track with that of the union's, and a October/November 2001 *IBEW Journal* in which it was reported that Local 58 contributed $21,500 of the $341,500 that the IBEW contributed toward an election in Oklahoma. (*Plaintiff's December 14, 2001 Affidavit* at Ex A & B). These letters do not evidence that the dues paid went to

anything other than collective bargaining activities. The November 1992 newsletter did not report any financial contributions to political activity, and neither newsletter corresponded to the timing of Plaintiff's dues deductions.

Furthermore, Plaintiff's claims of constitutional violations are both factually and legally without merit. Although the *Beck* plaintiffs claim rested in part upon the First Instead, the Court found that it "need not decide whether the exercise of rights permitted, though not compelled, by § 8(a)(3) involves state action." *Id.* at 761. This is important because "the conduct of private parties lies beyond the Constitution's scope in most instances ...." *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 620 (1991). So *Beck* is really no support of Plaintiff's constitutional claim.

Plaintiff also cites *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977). In that case the Court held that the employees' First Amendment rights were violated when they were required to contribute toward political causes that those employees opposed. "[T]he Constitution requires [] that [political] expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment." *Id.* at 235-236. But *Abood* has important distinctions from this case. First, the Abood case involved governmental employees, as the above quote indicates. Secondly, in *Abood*, the Court found the case to implicate the constitution because Michigan law sanctioned the use of nonunion members fees for purposes other than collective bargaining. *Id.* at 232. Hence, *Abood* involved both state actors and state action. Neither is present here.

Moreover, even though the *Abood* case involved state actions and state actors the court did not hold that the union was forbidden from participating in political activity. To the contrary the Court stated, "We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative." *Abood* at 235. Rather, the Court held that those activities could not be funded with the dues of objecting

employees. Thus, even if this case involved state action, Plaintiff's evidence that the Local 58 has been involved politically would have been insufficient to sustain his First Amendment claim. Plaintiff has not shown that his dues were used to fund political activities, much less any activities that he opposed.

The Court additionally notes factual allegations of Plaintiff's Count 1 that are unsustainable. Contrary to Plaintiff's claim otherwise, the dues deduction authorization was not submitted to Plaintiff in fine print. The phrase "PAYROLL DEDUCTION AUTHORIZATION" is the most prominent writing on the referral card that Plaintiff signed. (*Local 58 Br.* at Ex. C). Of further significance is the fact that Plaintiff did not initially claim that he was seeking a refund of his dues or to rescind his authorization because he was tricked into signing it. Rather, he specifically indicated that he wanted to rescind his authorization because his reciprocity form for his 1998 benefits was not honored; he wanted to rescind his authorization out of retaliation.

Furthermore, Plaintiff alleges that an unknown amount of benefits was taken from him. To the extent that Plaintiff means that Defendants deducted benefit payments from his salary, that allegation is directly contrary to the explanation that Radjewski gave to him. Radjewski repeatedly explained that benefits contributions are made from employers over and above the employees' wages. Moreover, to the extent that Plaintiff means that Defendants refused to send his 1998 benefits to his home fund, the record is clear that Plaintiff forgot to sign the reciprocity form until 2000. Thus, the benefits were not "nonexistent" or "unavailable," as Plaintiff contends. (*Amended Complaint* at ¶ 22). The benefits would have been sent to Plaintiff's home fund if he had timely submitted the reciprocity form.

At any rate, even if Plaintiff were able to sustain his factual allegations, they cannot support his First Amendment or Fifth Amendment claims because of the lack of state action.

C. <u>Counts II through V</u>

Plaintiff's additional counts are: Count II, for fraud and deceit; Count III, for breach of contract; Count IV, for breach of duty of fair representation; and Count V, for intentional infliction of emotional distress. The factual allegations described in Count I that have already been rejected form the basis of these latter

counts, and Defendants are therefore entitled to summary judgment on Counts II through V.

Furthermore, the Court finds that the claims against the Funds in Counts II, III and V are preempted by ERISA, *see, Lion's Volunteer Blind Ind., Inc. v. Automated Group Admin., Inc.*, 195 F.3d 803, 807 (6th Cir. 1999), and that Plaintiff's allegations against the Funds does not state a claim under ERISA. Plaintiff has not shown that ERISA prohibits fringe benefits funds from collecting contributions for employment arising out of a CBA from employers with which the union has negotiated the CBA.

Moreover, Plaintiff's breach of duty of fair representation claim against Local 58 and Radjewski is barred by the NLRA's six month limitation period, which began when Plaintiff knew or should have known of Local 58's alleged breach of its duty of fair representation. *Schoonover v. Consolidated Freightways Corp. of Delaware*, 49 F.3d 219, 221 (6th Cir. 1995). Plaintiff alleges that, *inter alia*, Local 58 and Radjewski deducted union dues without Plaintiff's authorization and without legal authority. (*Amended Complaint* at 77). Plaintiff attempted to rescind his dues deduction authorization as early as September 15, 2000. Thus, Plaintiff knew about the alleged wrongful due deductions over six months before filing his June 13, 2001 Complaint. Further, Plaintiff's allegations of fraud and deceit, breach of contract and intentional infliction of emotional distress arise out of the same alleged wrongful conduct that underlies the breach of duty of fair representation claim, and are therefore also barred by the six month limitation period. *Maynard v. Revere Copper Products, Inc.*, 773 F.2d 733, 735 (6th Cir. 1985).

IV. Conclusion

For the foregoing reasons, THE COURT GRANTS The Funds and Mittelbrun filed a Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative, Summary Judgment **[document 9]** and the Local 58 and Radjewski filed a Motion for Dismissal for Failure to State a Claim on Which Relief Can Be Granted, or in the Alternative Summary Judgment as to Counts I-IV of Plaintiff's Complaint **[document 12]**.

Dated: MAR 18, 2002

Victoria A. Roberts
U.S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CASE NO. 01-72222

JUDGMENT

In accordance with the Order entered on MAR 18, 2002, IT IS ORDERED that Judgment is entered in favor of Defendants.

Dated at Detroit, Michigan on MAR 18, 2002.

DAVID J. WEAVER
CLERK OF THE COURT

Victoria A. Roberts
U.S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

CASE NO. 01-72222

Order Denying Motion

Plaintiff has filed a Motion to Temporarily Vacate the Judgment and Allow Filing of a Motion to Reconsider an Order Granting Dismissal and Summary Judgment to the Defendants (filed April 9, 2002).

After review of Plaintiff's motion and brief, the motion is denied.

IT IS SO ORDERED.

Filed: APR 11, 2002

Victoria A. Roberts
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPEAL NO. 02-1503

ORDER

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Before SILER, DAUGHTREY, and GILMAN, Circuit Judges.

Lawrence Moore, proceeding pro se, appeals a district court order dismissing his labor action filed pursuant to the Labor Management Relations Act, 29 U.S.C. § 185; the National Labor Relations Act, 29 U.S.C. § 158; the Employees Retirement Income Security Act, 29 U.S.C. § 1001 et seq.; and 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

On June 13, 2001 Moore filed suit against the International Brotherhood of Electrical Workers Local 58 ("Local 58"), Jeff Radjewski, Thomas Mittelbrun, and several fringe benefit funds for monetary and equitable relief. Moore asserted in his complaint that: 1) the defendants violated his rights under the Free Speech Clause and the Takings Clause; 2) the defendants committed fraud and deceit; 3) the defendants breached the Collective Bargaining Agreement ("CBA"); 4) Local 58 and Radjewski breached their duty of fair representation; and 5) the defendants intentionally inflicted emotional distress. Upon consideration of the pleadings the district court granted the defendants' motions to dismiss, or, in the alternative, for summary judgment.

In his timely appeal Moore essentially reasserts his claims and argues that the district judge should have recused herself.

Upon de novo review we conclude that the district court's judgment must be affirmed. *See* Fed.R.Civ.P. 12(b)(6) and 56(c); *Harrow Prods., Inc. v. Liberty Mut. Ins. Co.*, 64 F.3d 1015, 1019 (6th Cir. 1995); *Wright v. MetroHealth Med. Ctr.*,

58 F.3d 1130, 1138 (6th Cir. 1995).

Moore's five claims substantially overlap and are based on virtually identical allegations. Moore, who was not a member of Local 58 but was a member of an affiliated union, received job referrals through Local 58's hiring hall to perform electrical work in July, 1998 and from the week ending September 16, 2000, through the week ending November 4, 2000. Moore's main complaint is that Local 58 supposedly tricked him into signing the union dues deduction form and would not refund the money or stop the withdrawals after he rescinded his authorization in a letter dated September 15, 2000. His other primary allegations were that Local 58 deducted the money while denying him a voice as a non-member, that the CBA did not permit deductions from the wages of non-members for union dues, that the defendants reduced his overtime pay rate, and that the defendants used the money deducted to make political contributions.

Moore's complaint lacked merit. Moore's first claim, in which he asserts that the defendants violated his constitutional rights, is not actionable. Generally, "the conduct of private parties lies beyond the Constitution's scope ...." *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991).

Moore's other federal claim, breach of a duty of fair representation, is time-barred by the six-months statute of limitations for unfair representation claims. *Adkins v. Int'l Union of Elec., Radio & Mach. Workers*, 769 F.2d 330, 335 (6th Cir. 1985) (citations omitted). "[T]he statute of limitations begins to run when the claimant knows or should have known of the union's alleged breach of its duty of fair representation." *Schoonover v. Consol. Freightways Corp.*, 49 F.3d 219, 221 (6th Cir. 1995); *see also Adkins*, 769 F.2d at 335. Moore should have known of any alleged breach of the duty of fair representation well before he completed the second job during the week ending November 4, 2000. Moore, however, did not file his complaint within six months, but waited seven months, until June 13, 2001.

Moore's state law claims are based upon the same allegations as his federal claim of a breach of the duty of fair representation and thus are preempted by federal labor law and are also time-

barred. "The duty of fair representation relates to an area of labor law which has been so fully occupied by Congress so as to foreclose state regulation." *Maynard v. Revere Copper Prods., Inc.* 773 F.2d 733, 735 (6th Cir. 1985); *see also In re Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, Local No. 173*, 983 F.2d 725, 728-29 (6th Cir. 1993). Moreover, when a federal claim of a breach of the duty of fair representation is barred by the six-month statute of limitations, "it would be anomalous to hold that the same claim survived the defense of limitations because it was stated in terms of state law." *Maynard*, 773 F.2d at 735.

Finally, the district judge did not abuse her discretion by failing to recuse herself. Moore was not entitled to recusal under 28 U.S.C. § 144 because he did not file an affidavit alleging judicial bias in the district court. *See United States v. Sammons*, 918 F.2d 592, 598-99 (6th Cir. 1990). Furthermore, the judge was not obligated to recuse herself pursuant to 28 U.S.C. § 455(a). A judge must only recuse herself where a reasonable person would be convinced that personal or extrajudicial bias exists. *Id.* at 599. No reasonable person would be convinced that the judge was biased against Moore. All of Moore's allegations referred to the judge's participation in the proceedings and do not support recusal. *See Id.*

Accordingly, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

Filed: SEP 13, 2002

Leonard Green
Clerk